

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: HARDEE et al.

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Examiner: HAWK, Noah Chandler

Title: Tent Corner Construction

Clerk of the Board
Washington, DC 20231

AMENDED APPEAL BRIEF

Seattle, Washington 98101

This amended appeal brief is filed in accordance with 37 C.F.R. § 41.37(d), and fully addresses the reasons for noncompliance set forth in the notification mailed September 22, 2006.

I. Real Party in Interest

The Real Party in Interest is The Coleman Company, Inc.

II. Related Appeals and Interferences

None.

III. Status of Claims

Claims 1-64, 66-72 and 74-76 are pending in the application. Claims 1-64, 66-72 and 74-76 stand rejected as outlined in the following paragraphs. Applicants appeal the rejection of Claims 1-64, 66-72 and 74-76.

Claims 51-54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the affidavit of Timothy Holub filed on November 7, 2005 (“*Holub*”), in view of U.S. Patent Number 6,154,884 to Dehner (“*Dehner*”) and U.S. Patent Number 5,411,425 to Rinker (“*Rinker*”).

Claim 55 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Holub* in view of U.S. Patent Number 5,283,112 to Krishnan (“*Krishnan*”) and *Rinker*.

Claims 56, 59, 60, and 61 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Holub* in view of *Krishnan*, U.S. Patent Number 4,519,410 to Kubacki (“*Kubacki*”), and *Rinker* as applied to Claim 55 above, and further in view of U.S. Patent Number 5,083,644 to Collins III (“*Collins*”).

Claim 57 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, *Rinker* and *Collins* as applied to Claim 56 above, and further in view of *Dehner*.

Claim 58 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, and *Rinker* as applied to Claim 55 above, and further in view of *Dehner*.

Claims 62-64 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, *Rinker* and *Collins* as applied to Claim 61 above, and further in view of *Dehner*.

Claim 66 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, and *Rinker* as applied to Claim 55 above, and further in view of *Rinker*.

Claims 67 and 68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, and *Rinker* as applied to Claim 55 above.

Claims 69-72 and 75-76 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, *Dehner*, *Collins*, and *Rinker*.

Claim 74 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, *Dehner*, *Rinker*, and *Collins* as applied to Claim 69 above, and further in view of *Rinker*.

Applicants appeal the rejections of Claims 51-64, 66-72, and 74-76. The Claims Appendix includes a copy of the claims on appeal.

IV. Status of Amendments

All amendments have been acted on by the Examiner.

V. Summary of Claimed Subject Matter

A. Background Information.

The following general description is provided as background for the present invention, and not all discussion involves the claims or their scope. The claims are addressed in the subsection following this section.

Briefly described, in accordance with an embodiment of the invention, a method of constructing a corner of a tent, canopy, or tarpaulin is provided. The method includes attaching two portions of a sheet of fabric material to form a three-dimensional corner, turning the three-dimensional corner inside out to form an inverted corner. In accordance with an embodiment, a second piece of fabric material is attached to the inverted corner to cover the seam formed by attachment of the two portions of fabric material forming the three-dimensional corner. A tab is provided by pinching the apex of the inverted corner together and connecting the pinched apex.

B. Concise Explanation of the Subject Matter Defined in Each of the Independent Claims Involved in the Appeal.

Claim 51 is directed to a method of constructing a corner (e.g., 20, FIG. 2) in a tent (e.g., 22, FIG. 1), canopy, or tarpaulin. Two portions of a sheet of fabric material (e.g., 26, FIG. 2) are attached to form a three-dimensional corner (e.g., FIG. 5), the attachment forming a seam (e.g., 54). The three-dimensional corner is turned inside out to form an inverted corner (e.g., FIG. 6) and a second sheet of fabric material (e.g., 28, FIG. 8) is extended over an inner portion of the inverted cover to cover at least a portion of the seam. A tab (e.g., 70, FIG. 7) is formed by pinching the apex (see the arrows 66 in

FIG. 6) of the inverted corner together and connecting it.

Claim 55 is directed to a method of constructing a corner (e.g., 20) for a floor tub of a tent (e.g., 22) or canopy. Two portions of a two-layer fabric material (e.g., 24 and 26 of FIG. 4) are attached to form a three-dimensional corner (e.g., FIG. 5), the attachment forming a seam (e.g., 54), and one layer (e.g., 24) of the fabric material extending over an interior portion of the three-dimensional corner. The three-dimensional corner is turned inside-out to form an inverted corner (e.g., FIG. 6) with the one layer of fabric material (e.g., 24) now extending over an exterior portion of the inverted corner. The walls of the tent or canopy are attached to the floor tub, and a tab (e.g., 70, FIG. 7) is formed by pinching the apex (see the arrows 66 in FIG. 6) of the inverted corner together and connecting it.

Claim 69 is directed to a method of constructing a corner (e.g., 20) of a floor tub of a tent (e.g., 22) or canopy. Two portions of a two-layer fabric material (e.g., 24 and 26 of FIG. 4) are attached to form a three-dimensional corner (e.g., FIG. 5). The two-layer fabric material has a notch (e.g., 30 and 38, 40 of FIG. 3) defining two inner edges along which the two portions are attached. The attachment of these two inner edges forms a seam (e.g., 54). The three-dimensional corner is configured so that that one layer of the two-layer material (e.g., 24) extends over an interior portion of the three-dimensional corner. The three-dimensional corner is turned inside out to form an inverted corner (e.g., FIG. 6) with the one layer (e.g., 24) of fabric material now extending over an exterior portion of the inverted corner. A second sheet of fabric material (e.g., 28, FIG. 8) is sealed to an interior of the inverted corner and the walls of the tent or canopy are attached to the floor tub. A tab (e.g., 70) is formed by pinching the apex (see the arrows 66 in FIG. 6) of the inverted corner together and connecting it.

VI. Grounds of Rejection to be Reviewed on Appeal

A. Whether Claim 51 is obvious under 35 U.S.C. 103(a) as being unpatentable over *Holub* in view of *Dehner* and *Rinker*.

B. Whether Claim 55 is obvious under 35 U.S.C. 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, and *Rinker*.

C. Whether Claim 69 is obvious under 35 U.S.C. 103(a) as being unpatentable over *Holub* in view of *Krishnan*, *Kubacki*, *Dehner*, *Collins*, and *Rinker*.

VII. Argument

A. The rejections of Claims 51-60 under 35 U.S.C. § 103(a) should be withdrawn because the cited references include nonanalogous art.

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 U.S.P.Q.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Deminski*, 796 F.2d 436, 230 U.S.P.Q. 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 U.S.P.Q.2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 U.S.P.Q.2d 1767 (Fed. Cir. 1993); and *State Contracting & Eng'g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1069, 68 U.S.P.Q.2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved). Reconstructing an applicant's invention by combining elements from non-analogous sources is insufficient to present a *prima facie* case of obviousness. *Oetiker*, 24 U.S.P.Q.2d at 1446. In order to combine elements from nonanalogous sources, there must be some reason, suggestion, or motivation found in the prior art. *Id.* Such knowledge cannot come from the applicant's invention itself. *Id.*

In *Clay*, the Federal Circuit reversed a decision of the Board denying a patent because the Board used nonanalogous art to reject the claims on obviousness grounds. 23 U.S.P.Q.2d at 1061. Specifically, the Board relied on a reference that solved a problem involving petroleum extraction while the applicant's invention involved petroleum storage. *Id.* The Federal Circuit reversed the denial because a person having ordinary skill in the art of petroleum storage would not have looked to the art of petroleum extraction to solve the particular problem. *Id.* Even though the prior art invention and the applicant's invention functioned in a similar manner, the conditions in which the inventions were intended to perform were substantially different. *Id.* at 1060. Similarly, in *Oetiker*, the Federal Circuit reversed the Board's denial of a patent because the Board relied on a patent disclosing a catch for use in garments while the applicant's invention involved hose clamps. 24 U.S.P.Q.2d at 1445-46. Even though the catch functioned in the same manner in garments as it did in the hose clamp invention, the denial was improper because the Board did not show that a person of ordinary skill seeking to solve a problem involving hose clamps would reasonably be expected or motivated to look to fasteners for garments. *Id.* at 1446.

As in *Clay* and *Oetiker*, the Examiner's rejections in this case rely on a combination of sources not analogous to the art in question, in this case, constructing tents. First, *Dehner* discloses waders to be worn by fishermen. According to the Examiner, *Dehner* teaches "the use of a second sheet of fabric material for covering the interior portion of a seam to prevent unwanted water penetration therethrough and

increase the strength of the seam.” (Office action dated April 5, 2006, Paragraph 4(a)). However, the Examiner fails to articulate any reason, suggestion, or motivation found in the prior art why someone skilled in the art of tent construction would reasonably be expected to look to the art of fishing garments to solve problems in tent construction. *See Oetiker*, 24 U.S.P.Q.2d at 1446.

Logically, one with ordinary skill in the tent construction art would not be inclined to look to the fishing garment art to solve its problems. Fishing garments are clearly outside the field of tent construction. In addition, the tent of the present invention and the fishing garment in *Dehner* involve substantially different problems. For example, fishermen often need to submerge their waders in rushing water for relatively short periods of time while moving over rocks, sand, debris, and other harsh obstacles. Tents, on the other hand, are subject to little bits of moisture for prolonged periods of time and remain stationary during their use. Like the inventions in *Clay* and the inventions in *Oetiker*, even if they do keep water out in a similar manner, waders and tents are used in completely different conditions under different circumstances. Therefore, those with ordinary skill in the tent construction art would not naturally be inclined to look to fishing garments.

Second, *Rinker* discloses a floatation apparatus for stabilizing a watercraft or supporting a person in the water. According to the Examiner, *Rinker* “teaches a tab (30) formed on a three-dimensional corner together and connecting the pinched apex to form the tab” and “further teaches the attachment of a loop to the tab.” (Office action dated

April 5, 2006, Paragraph 4(a)). As with the waders, the Examiner fails to articulate any reason, suggestion, or motivation found in the prior art why someone skilled in the art of tent construction would reasonably be expected to look to the art of floatation apparatuses. *See Oetiker*, 24 U.S.P.Q.2d at 1446. In fact, nowhere in *Rinker* does the specification describe how the elements of the floatation apparatus would apply to the problems faced in tent construction, most notably providing a smooth strong corner that protects against water leakage.

Clearly, for the problem of how to smooth out a tent corner and provide something to which something may be attached, a floatation apparatus is not something that “logically would have commended itself to an inventor's attention in considering his problem.” *See Clay*, 23 U.S.P.Q.2d at 1061. The problems faced in designing and constructing floatation apparatuses are completely different from those faced with constructing a tent. In formulating his improper rejection, the Examiner failed to show that someone with ordinary skill in the tent construction art would reasonably be expected or motivated to look to floatation devices to solve the particular problem the inventors faced. *See Oetiker*, 24 U.S.P.Q.2d at 1446. Without such a showing, it is apparent that the Examiner used hindsight to reconstruct Applicants’ invention, in this case, taking an element of an invention in an unrelated art that happens to be present in Applicants’ invention. Indeed, the cited references contain no reason, suggestion, or motivation whereby a person of ordinary skill in the field of tent construction would

combine elements of the floatation device art with elements of the tent construction art to arrive at the present invention.

Third, *Collins* discloses a briefcase cover. According to the Examiner, *Collins* “discloses a fabric material for making a corner, the fabric material having a notch cut between two portions to define two inner edges (41) along which the two portions are attached[.]” (Office action dated April 5, 2006, Paragraph 12(g)). Needless to say, the art of tent construction is completely different than the art of briefcase covers because briefcase covers and tents are used in dissimilar conditions under different circumstances. For example, tents may be exposed to moisture for prolonged periods of time while, generally, briefcases are only exposed to moisture for short periods, for instance, when someone walks from their car to their place of work. Stated briefly, as with the waders and with the floatation device, the Examiner failed to identify the requisite reason, motivation, or suggestion to combine elements from nonanalogous sources. Moreover, such a reason, motivation, or suggestion does not appear in the cited references.

In summary, *Dehner*, *Rinker*, and *Collins* are all nonanalogous art because they involve technologies in drastically different fields that are used in substantially different conditions under different circumstances. Moreover, the cited sources contain no reason, motivation, or suggestion that the elements contained therein can have application in the art of constructing tents. Accordingly, it is clear that the Examiner improperly used hindsight to reconstruct Applicants’ invention in this manner. See *Oetiker*, 24 U.S.P.Q.2d at 1446. In addition, because Claims 51, 55, 69, and their dependants all

stand rejected based on one or more of the above nonanalogous sources, the rejections should be withdrawn.

B. The rejections of Claims 51-60 under 35 U.S.C. § 103(a) should be withdrawn because, even if the cited references are analogous art, the prior art does not teach, motivate, or suggest modification or combination of the references.

“To reject claims in an application under section 103, an examiner must show an unrebutted *prima facie* case of obviousness.” *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998). Three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claim’s combination and the reasonable expectation of success must both be found in the prior art, and not based upon the applicant’s disclosure. *In re Vaeck*, 974 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Rejections must be clearly articulated. In rejecting a claim under section 103, “rejections on obviousness grounds cannot be sustained by mere conclusory statements.” *In re Kahn*, 78 U.S.P.Q.2d 1329, 1336 (Fed. Cir. 2006). The examiner must articulate reasoning which rationally supports conclusions of obviousness. *Id.*; *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). When the examiner does not explain the motivation, suggestion, or teaching for a rejection, there is an inference that the

examiner used hindsight to conclude that the invention was obvious. *See Fine*, 5 U.S.P.Q.2d at 1600; *Kahn*, 78 U.S.P.Q.2d at 1335.

In *Fine*, the Federal Circuit reversed the decision of the Board because the Board had simply reiterated the bald assertion of the examiner that modifying a reference would have been obvious to one with skill in the art. 5 U.S.P.Q.2d 1596, at 1599. Similarly, in this case, the Examiner makes only bald assertions of obviousness, in violation of the rule articulated in *Fine* and confirmed in *Kahn* requiring that an examiner articulate the reasons for rejection.

For example, in rejecting Claim 51, the examiner states that *Holub* discloses a method of constructing a corner in a tent comprising attaching two portions of a sheet of fabric material to form a three-dimensional corner and turning the corner inside out, but concedes that *Holub* “does not disclose a second sheet of material or the construction of a tab.” The Examiner finds the use of a second sheet of fabric material for covering the interior portion of a seam in *Dehner*, and a tab in *Rinker*. Once he identifies all the claim limitations in various references, the Examiner then makes only the argument that

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the method of *Holub* by attaching a second piece of material on the interior of the corner as taught by *Dehner* in order to further prevent water penetration through the corner and to increase the strength of the corner and by forming a tab on the apex of the corner and attaching a loop as taught by *Rinker* in order to provide a means for the user to attach a fixing devices [sic] to the corner.

(Office action dated April 5, 2006, Paragraph 4(a)). Other than that conclusory statement, the Office action lacks any articulation of the reasons why combining the

references in that manner would be obvious to one with ordinary skill in the art at the time the invention was made. The Examiner identifies no teaching, motivation, or suggestion to combine *Holub* (disclosing a tent construction), *Dehner* (disclosing waders), and *Rinker* (disclosing a floatation apparatus), neither in the references themselves nor in the knowledge generally available to one with ordinary skill in the art. Indeed, such a teaching, motivation, or suggestion is not found at all in the references. Thus, it is clear that the Examiner has based his conclusory statements upon a hindsight viewing of the invention in light of the applicant's own disclosure. Such hindsight rejections are not allowed. *See Kahn*, 78 U.S.P.Q.2d at 1335. Therefore, the rejections should be withdrawn.

Claims 55 and 69 are rejected by the Examiner in the same manner as Claim 51. Briefly, for Claim 55, the Examiner identifies every claim limitation of the present invention in either *Holub*, *Krishnan*, *Kubacki*, or *Rinker* and makes the conclusory argument that it would have been obvious to combine the references to arrive at the present invention. (Office action dated April 5, 2006, Paragraph 5). Similarly, for Claim 69, the Examiner identifies every claim limitation of the present invention in either *Holub*, *Krishnan*, *Collins*, *Dehner*, *Kubacki*, or *Rinker* and gives the same conclusory argument that it would have been obvious to combine the references. (Office action dated April 5, 2006, Paragraph 12(g)). As above, for the rejections of Claims 55 and 69, the Examiner does not articulate the requisite teachings, motivations, or suggestions required for a rejection on obviousness grounds. Moreover, such teachings, motivations,

or suggestions do not appear anywhere in the references and, therefore, the rejections are improper and should be withdrawn.

The remaining claims are all dependent on Claim 51, 55, or 69. If an independent claim is nonobvious, then the claims dependent on that claim are nonobvious as well. *Fine*, 5 U.S.P.Q.2d at 1600. Furthermore, the Examiner rejected all remaining claims using the same conclusory argument as above without articulating any reason why combination of the references would be obvious. Applicants submit that the remaining dependent claims further define subject matter not shown or made obvious by the prior art. Therefore, the rejections of the dependent claims should be withdrawn as well.

CONCLUSION

Claims 51-64, 66-72, and 74-76 are patentable. The Examiner has incorrectly rejected all of the claims as being obvious. For this reason, Applicants request that the Board reverse the Examiner's rejections of the pending claims and set the application in condition for allowance.

Respectfully submitted,

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Date: October 9, 2006

/Roger D. Wylie/

Roger D. Wylie

VIII. Claim Appendix

51. A method of constructing a corner in a tent, a canopy, or a tarpaulin, comprising:

attaching two portions of a first sheet of fabric material so as to form a three-dimensional corner, the attachment of the two portions forming a seam;

turning the three-dimensional corner inside out to form an inverted, three-dimensional corner;

extending a second sheet of fabric material over an interior portion of the inverted, three-dimensional corner so as to cover at least a portion of the seam; and

forming a tab on an apex of the inverted three-dimensional corner by pinching the apex of the inverted three-dimensional corner together and connecting the pinched apex to form the tab.

52. The method of claim 51, further comprising attaching a loop to the tab.

53. A tent having a corner formed in accordance with the method of claim 51.

54. The tent of claim 53, further comprising a tub floor, and wherein each corner of the tub floor is formed in accordance with the method of claim 41.

55. A method of constructing a corner for a floor tub of a tent or canopy, comprising:

attaching two portions of a two layer fabric material so as to form a three-dimensional corner, the attachment of the two portions forming a seam, the two layer fabric material comprising a first layer of fabric material extending against a second layer of fabric material, the three-dimensional corner being configured so that the second layer of fabric material extends over an interior portion of the three-dimensional corner;

turning the three-dimensional corner inside out to form an inverted, three-

dimensional corner wherein the second layer of fabric material extends over an exterior portion of the inverted, three-dimensional corner;

attaching walls of the tent or canopy to the floor tub; and

forming a tab on an apex of the inverted three-dimensional corner by pinching the apex of the inverted three-dimensional corner together and connecting the pinched apex to form the tab.

56. The method of claim 55, wherein the two portions of the two layer fabric material are attached so that excess materials for the two portions at the seam extend adjacent to one another and on an exterior of the three-dimensional corner, and wherein turning the three-dimensional corner inside out comprises turning the excess materials toward an interior portion of the inverted, three-dimensional corner.

57. The method of claim 56, further comprising, arranging the excess materials to one side of the seam and extending a second sheet of fabric material over the interior portion.

58. The method of claim 55, further comprising extending a second sheet of fabric material over the interior portion.

59. The method of claim 55, wherein the first and second portions of the two layer fabric material are attached by stitching.

60. The method of claim 55, wherein the first layer of fabric material includes a first notch formed therein and defining first side edges, and wherein the second layer of fabric material includes a second notch defining second side edges, and wherein the first side edges are aligned with the second side edges.

61. The method of claim 55, wherein the inverted three-dimensional corner comprises three sides, and wherein the second layer of fabric material extends over an exterior portion of each of the three sides of the inverted three-dimensional corner.

62. The method of claim 61, further comprising extending a second sheet of fabric material over the interior portion.

63. The method of claim 62, wherein the second sheet of fabric material comprises a sealing tape.

64. The method of claim 63, wherein the sealing tape comprises a waterproof sealing tape.

66. The method of claim 55, further comprising attaching a loop to the tab.

67. A tent having a floor tub with at least one corner formed in accordance with the method of claim 55.

68. The tent of claim 67, wherein each corner of the tub floor is formed in accordance with the method of claim 55.

69. A method of constructing a corner for a floor tub of a tent or canopy, comprising:

attaching two portions of a two layer fabric material so as to form a three-dimensional corner, the two layer fabric material having a notch cut therein, the notch defining two inner edges along which the two portions are attached, the attachment of the two portions forming a seam, the two layer fabric material comprising a first layer of fabric material extending against a second layer of fabric material, the three-dimensional corner being configured so that the second layer of fabric material extends over an

interior portion of the three-dimensional corner;

turning the three-dimensional corner inside out to form an inverted, three-dimensional corner wherein the second layer of fabric material extends over an exterior portion of the three-dimensional corner;

sealing a second sheet of fabric material to an interior of the inverted, three-dimensional corner;

attaching walls of the tent or canopy to the floor tub; and

forming a tab on an apex of the inverted three-dimensional corner by pinching the apex of the inverted three-dimensional corner together and connecting the pinched apex to form the tab.

70. The method of claim 69, wherein the second sheet of fabric material comprises a sealing tape.

71. The method of claim 70, wherein the sealing tape comprises a waterproof sealing tape.

72. The method of claim 69, wherein the sealing tape is welded to the interior.

74. The method of claim 69, further comprising attaching a loop to the tab.

75. A tent having a floor tub with at least one corner formed in accordance with the method of claim 69.

76. The tent of claim 75, wherein each corner of the tub floor is formed in accordance with the method of claim 69.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.